INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Argument	7
Conclusion	10
Appendix	11

CITATIONS

Case:	
Interstate Commerce Commission v. *Parker*, 326 U.S. 60	8
Statutes and regulations:	
Civil Aeronautics Act of 1938, 52 Stat. 973, as amended, 49 U.S.C. (1952 ed.) 401, *et seq.*:	
Sec. 609	15
Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. 1301, *et seq.*:	
Sec. 602	10, 11
Sec. 609	3, 7, 12
Sec. 1005(a)	7, 13
Sec. 1006	3, 14
Civil Air Regulations, 14 C.F.R. (1961 ed.) 1.0, *et seq.*:	
40.406	6, 17
60.12	5, 6, 19
60.14	5, 20
60.15	5, 20
60.18	21
60.21	6, 21
60.30	6, 21

673597—63——1

Statutes and regulations—Continued
Rules of Practice in Air Safety Proceedings, 14 C.F.R. (1961 ed.) 301.1, *et seq.*:
Page
301.50 ..... 3, 16
Miscellaneous:
104 Cong. Rec. 16081 8

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 719

BORIS S. NADIAK, PETITIONER

v.

CIVIL AERONAUTICS BOARD, AND NAJEEB E. HALABY, ADMINISTRATOR OF THE FEDERAL AVIATION AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 1–12) is reported in 305 F. 2d 588. The order of the Civil Aeronautics Board (Tr. 117, *et seq.*) [1] is not yet reported.

JURISDICTION

The judgment below was entered on July 6, 1962, and a petition for rehearing was denied on August 8, 1962. By order of November 2, 1962, Mr. Justice Black extended the time for the filing of the petition

[1] "Tr." references are to the unprinted pages of the original record.

for a writ of certiorari to January 4, 1963, and the petition was filed on January 3, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

After investigation conducted pursuant to section 609 of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Agency determined that, because of multiple violations of the Civil Air Regulations committed by petitioner over an extended period of time, safety in air transportation required the immediate revocation of petitioner's pilot license. Petitioner thereafter appealed from the Administrator's order to the Civil Aeronautics Board as provided in Section 609. After a *de novo* hearing, the Board found the principal charges sustained and affirmed the order of revocation. The questions presented are:

1. Whether the Administrator properly determined that an emergency existed which warranted the immediate revocation of petitioner's certificate.

2. Whether petitioner had adequate opportunity, in the subsequent *de novo* hearing before the Board, to meet the Administrator's charges.

STATUTES INVOLVED

The relevant provisions of the Civil Aeronautics Act of 1938, the Federal Aviation Act of 1958, the Board regulations issued thereunder, and the Civil Air Regulations of the Federal Aviation Agency are set forth in the Appendix, *infra*, pp. 11–22.

STATEMENT

Petitioner is an airline pilot previously employed by National Airlines (Tr. 869). As a result of a reported incident on March 15, 1960 which apparently involved petitioner's operation of his aircraft in violation of the Civil Air Regulations,[2] the Administrator, on April 25, 1960, initiated an investigation of petitioner's operation of commercial aircraft—an investigation which took approximately eight months to complete (Tr. 276). Shortly thereafter, on January 12, 1961, the Administrator, acting under the emergency provisions of Section 609 of the Act (49 U.S.C. 1429), revoked petitioner's airman certificate on grounds of multiple violations (Tr. 13), thus effectively grounding him. Petitioner promptly appealed to the Board (Tr. 143).[3] The Administrator there-

[2] This incident is described at p. 4, *infra*.

[3] Under the statutory scheme (Sections 609 and 1006 of the Act, *infra*, pp. 12, 14), the Administrator is empowered, after investigation, to issue an order suspending or revoking, in whole or in part, any airman's certificate. The airman so affected may appeal this action of the Administrator to the Board in a *de novo* proceeding in which the Administrator is the complainant. Such an appeal automatically stays the effectiveness of the Administrative order, except where the Administrator advises the Board that an emergency exists and that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which case the Board must dispose of the appeal within 60 days. Because of this statutory period for the disposition of the appeal in emergency cases, the Board has adopted accelerated procedures with respect to its treatment of such appeals (14 C.F.R. 301.50, *infra*, p. 16). Under the Board's practice, an airman may obtain additional time within which to present a defense if he agrees to a continuation of the Administrator's order until the Board disposes of the matter.

upon filed a complaint in which he charged petitioner with twenty-three violations of the Civil Air Regulations on which he had predicated his emergency revocation (Tr. 1). Petitioner denied the charges, and a protracted hearing, lasting from February 13, 1961 to February 24, 1961, was held before a Board examiner. He found (Tr. 139) that the Administrator had established the allegations in the complaint by substantial, reliable, and probative evidence.

The Board, after hearing oral argument, issued its Order S–1093, dated March 24, 1961 (Tr. 117, *et seq.*), affirming the Administrator's emergency revocation of petitioner's airman certificate. The Board found it unnecessary to consider all of the charges made by the Administrator, and limited itself to those set forth in pars. IV–VIII of his complaint (Tr. 132), which dealt with flights made by petitioner while he was pilot in command of commercial aircraft on March 15, 1960, May 24, 1960, May 8, 1960, April 25, 1960, and April 4, 1958.

The facts and violations, as found by the Board, were as follows:

A. On March 15, 1960, petitioner, while approaching Patrick Henry Airport, Newport News, Virginia, in the early afternoon under ideal weather conditions, disregarded instructions he had received from an air traffic controller not to overtake a small plane engaged in touch-and-go landings occupied by an instructor and a student, and passed directly above that plane so as almost to cause the plane to overturn while it

was approximately four feet above the ground (Tr. 121–123).[4]

B. On May 24, 1960, petitioner, while taking off from the same airport under ideal weather conditions, departed downwind when the tailwind velocity was 15 knots per hour, and thereafter on reaching climb-out altitude executed a right turn, although the airport traffic pattern required that he execute a left turn. The downwind takeoff was not only in violation of the company's instructions which prohibited such action when the wind was in excess of 8.5 knots per hour, but was extremely hazardous in that the performance of the plane under such conditions was unknown to the company and the manufacturer. The left turn after climbout required by the airport pattern was the result of an agreement between the airport and Langley Air Base so as to permit military aircraft to occupy certain airspace without running the risk of collision with civilian aircraft (Tr. 124–125).[5]

C. On May 8, 1960, petitioner landed his aircraft at Logan International Airport at 7:15 p.m., at a time when the ceiling was below the prescribed minimum for landing, of which fact petitioner conceded he had been informed by the tower, and in such a careless manner that it was necessary for a copilot to assume

[4] This conduct of petitioner violated Sections 60.14(d), 60.15 and 60.12 of the Civil Air Regulations (*infra*, pp. 20, 21, 19).

[5] Under these circumstances, petitioner violated Sections 60.18(c) and 60.12 of the Civil Air Regulations (*infra*, pp. 21, 19).

the controls on two occasions to prevent the aircraft from crashing (Tr. 125–127).[6]

D. On April 25, 1960, petitioner, while operating his aircraft under instrument flying conditions, *i.e.*, traveling through heavy overcast, twice changed his altitude without first obtaining permission from an air traffic control center to do so. At the time he made his first unauthorized deviation, he was aware of the presence of another airliner in his immediate vicinity, but nevertheless proceeded. On the occasion of his second deviation, he flew 20 minutes through overcast and under circumstances where he was unaware of his exact position (Tr. 128–130).[7]

E. On April 4, 1958, petitioner, on a flight from New York to Miami, again flew under instrument conditions through overcast for a period of 10 to 20 minutes without obtaining any instrument flight clearance from the air traffic control center. During his descent at Miami, petitioner, without approach control or tower control coordination, flew through clouds (Tr. 131–132).[8]

On the basis of these determinations, the Board found that the petitioner lacked the care, judgment, and responsibility required of the holder of an airman certificate, and affirmed the revocation action of the Administrator. On review, the court of appeals found that the charges against the petitioner were

[6] By his conduct, petitioner violated Sections 40.406 and 60.12 of the Civil Air Regulations (*infra*, pp. 17, 19).

[7] This conduct of petitioner violated Sections 60.30, 60.21, and 60.12 of the Civil Air Regulations (*infra*, pp. 21, 19).

[8] This conduct of petitioner violated Sections 60.30 and 60.12 of the Civil Air Regulations (*infra*, pp. 21, 19).

not only supported by substantial evidence, but that the amount of evidence to support them was "staggering" (Pet. App. 6). In addition, it found that petitioner's allegations of an unfair trial were completely unsupported.[9] The court of appeals summarized its conclusions as follows:

> After permissible credibility choices, the findings were that numerous regulations and rules of the air lanes—which must not be ignored or taken lightly—had been violated. Those findings were supported by substantial evidence in a hearing which was fair and regular. There it ends. [Pet. App. 12.]

ARGUMENT

1. Contrary to petitioner's assertions, this case presents no issue requiring this Court to define the scope of the Administrator's emergency powers or to delineate the circumstances in which the invocation of these powers is warranted. The statute itself specifies (Section 609, *infra*, p. 15) that the Administrator may take emergency action against airman certificates if "he determines that safety in air commerce or air transportation and the public interest requires" a revocation and that "an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order."[10] These ulti-

[9] In his brief and at oral argument before the court of appeals, petitioner relied principally on alleged improper and prejudicial rulings by the hearing examiner depriving him of a fair trail, which he does not assert here.

[10] Additional emergency powers are conferred by Section 1005(a) (*infra*, p. 13) whereby the Administrator is empowered to issue emergency orders "either upon complaint or his own

mate conclusions, which must be drawn "from the infinite variety of circumstances which may occur in specific instances," are plainly committed to "administrative discretion," *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65.

Petitioner apparently contends that a series of incidents demonstrating that an airman is unsafe cannot suffice as grounds for emergency action. In his view, emergency powers may be invoked only immediately after a major offense of such gravity as would independently warrant revocation of the certificate. The Congress did not impose any such limitation, and plainly none is warranted."

Furthermore, petitioner offers no substantiation for his charge (Pet. 11) that the Administrator's use of his emergency powers was arbitrary and capricious beyond the mere fact that the most recent violation charged in the Administrator's complaint against him occurred "more than eight months prior to the emergency order of January 12, 1961" (Pet. 9). But, as noted above, the emergency order was issued shortly after the completion of the Administrator's investiga-

---

initiative without complaint, at once, if he so orders, without answer or other form of pleading by the interested person or persons, and * * * without notice, hearing, or the making or filing of a report" whenever he is of the opinion "that an emergency requiring immediate action exists in respect of safety in air commerce * * *."

"The present provisions permitting emergency action are essentially a continuation of earlier ones set forth in the predecessor Civil Aeronautics Act. See 104 Cong. Rec. 16081. The action here involved does not differ in character from other emergency orders issued under both the Civil Aeronautics and Federal Aviation Acts.

tion into petitioner's conduct. Petitioner is in no position to complain because a thorough investigation was conducted before the Administrator concluded that it was necessary to act.

Petitioner does not even question the substantiality of the evidence on which the Board and the court of appeals found that he had flagrantly violated the Civil Air Regulations on at least five occasions, and that his propensity for careless and reckless operation of his aircraft jeopardized not only his own life but those of others, and that he could not be safely entrusted with the operation of an aircraft. Under these circumstances, the Administrator's employment of his emergency power was obviously justified, if not indeed compelled.

2. The court of appeals properly concluded that petitioner was afforded a fair hearing. The court below was concerned, as had been the Board, with the fact that the Administrator had brought more charges against the petitioner than were necessary to sustain his order. The court accordingly undertook to read the testimony completely in order to determine whether the Administrator's action had in any way prejudiced the petitioner. It concluded, "without any reservations whatsoever," that no prejudice had resulted (Pet. App. 3). Petitioner makes no showing which in any way detracts from this conclusion.[12]

[12] Petitioner has failed to show any prejudice whatsoever resulting from the 60-day time limit placed on the administrative hearings, or that he had ever requested and been denied an extension (see note 3, *supra*).

Petitioner also suggests that review should be granted because the determination of revocation requires that he requalify and because the Administrator is allegedly refusing him permission to apply for a new license. But, as the court of appeals pointed out (Pet. App. 3), there is no basis for an assumption that the Administrator will not comply with his obligation to afford proper and fair consideration to an application by petitioner.[13]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
LEE LOEVINGER,
Assistant Attorney General.
JOHN H. WANNER,
General Counsel,
Civil Aeronautics Board.
NATHANIEL H. GOODRICH,
General Counsel,
Federal Aviation Agency.

FEBRUARY 1963.

---

[13] Even if it could be assumed that the Administrator would not fulfill his responsibilities, the remedy lies elsewhere. Under Section 602 of the Act (*infra*, p. 11), petitioner may appeal to the Board from any denial of a license application and, to the extent that any testing is required in relation to a new application, he may institute judicial action to require appropriate testing.

APPENDIX

A. Relevant provisions of the Federal Aviation Act of 1958 (72 Stat. 731, 49 U.S.C. 1301, *et seq.*) are:

* * * * *

TITLE VI—SAFETY REGULATION OF CIVIL AERONAUTICS

* * * * *

ISSUANCE OF CERTIFICATE

SEC. 602. (b) [72 Stat. 776, 49 U.S.C. 1422] Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the Board a petition for review of the Administrator's action. The Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and

in determining whether the airman meets the pertinent rules, regulations, or standards, the Board shall not be bound by findings of fact of the Administrator. At the conclusion of such hearing, the Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Administrator shall be bound by such decision: *Provided,* That the Administrator may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

* * * * * *

AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

SEC. 609. [72 Stat. 779, 49 U.S.C. 1429] The Administrator may, from time to time, reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any

charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the Board and the Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of its hearings the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the Board's order may obtain judicial review of said order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

* * * * *

TITLE X—PROCEDURE

* * * * *

ORDERS, NOTICES, AND SERVICE—EFFECTIVE DATE OF ORDERS; EMERGENCY ORDERS

SEC. 1005. [72 Stat. 794, 49 U.S.C. 1485] (a) Except as otherwise provided in this Act, all orders, rules, and regulations of the Board or the Administrator shall take effect within such reasonable time as the Board or Administrator may prescribe, and shall continue in force until their further order, rule, or regulation, or for a specified period of time,

as shall be prescribed in the order, rule, or regulation: *Provided*, That whenever the Administrator is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, the Administrator is authorized, either upon complaint or his own initiative without complaint, at once, if he so orders, without answer or other form of pleading by the interested person or persons, and with or without notice, hearing, or the making or filing of a report, to make such just and reasonable orders, rules, or regulations, as may be essential in the interest of safety in air commerce to meet such emergency: *Provided further*, That the Administrator shall immediately initiate proceedings relating to the matters embraced in any such order, rule, or regulation, and shall, insofar as practicable, give preference to such proceedings over all others under this Act.

* * * * *

ORDERS OF BOARD ADMINISTRATOR SUBJECT TO REVIEW

SEC. 1006. [72 Stat. 795, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

FINDINGS OF FACT CONCLUSIVE

(e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

* * * * *

B. Relevant provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973, as amended, 49 U.S.C., 1952 ed., 401, *et seq.*) are:

* * * * *

AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

SEC. 609. [52 Stat. 1011, 49 U.S.C. (1952 ed.) 559]. The Authority [Administrator] may, from time to time, reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, may reexamine any airman, and, after investigation, and upon notice and hearing, may alter, amend, modify, or [the Board may] suspend, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if the interest of the public so requires, or [the Board] may revoke, in whole or in part, any such certificate for any cause which, at the time of revocation, would justify the Authority [Administrator] in refusing to issue to the holder of such certificate a like certificate. In cases of emergency, any such certificate may be suspended, in whole or in part, for a period not in excess of thirty days, without regard to any requirement as to notice and hearing. The Authority shall immediately give notice of such

suspension to the holder of such certificate and shall enter upon a hearing which shall be disposed of as speedily as possible. During the pendency of the proceeding the Authority may further suspend such certificate, in whole or in part, for an additional period not in excess of thirty days.

* * * * *

C. Relevant provisions of the Board's Rules of Practice in Air Safety Proceedings (14 C.F.R., 1961 ed., 301.1, *et seq.*) are:

* * * * *

PROCEDURE ON EMERGENCY ORDERS

§ 301.50 Proceedings where the Administrator has made an emergency order.

(a) When the Administrator has made an emergency order, as provided for in Section 609 of the Act, and it has been appealed to the Board, the provisions of this part shall apply with the following modifications: Where the procedure of § 301.14 is not used, the Administrator shall serve and file his complaint within 5 days after advising the Board of the emergency character of his order, and the respondent shall serve and file his answer within 8 days. Where the procedure of § 301.14 has been used, the Administrator's advice of the emergency character of his order shall be deemed received by the Board at the time his order is docketed and the respondent's answer, if separate from the appeal, shall be filed and served within 5 days of the filing of the appeal.

(b) No motion to dismiss or for more definite statement shall be made but the substance thereof may be stated in the answer. The examiner may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) The examiner shall, immediately upon the filing of the answer, set the date and place for hearing upon not to exceed 8 days' notice to the parties. The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument.

(d) Notice of appeal shall be given within 2 days of the initial decision. No exceptions shall be filed but each party shall file one brief with the Board within 5 days of the notice of appeal. The Board will give 3 days' notice of oral argument, where granted. The Board will not entertain petitions for reconsideration, rehearing, reargument or modification of its order except on the ground that new evidence has been discovered which could not have been discovered before by the exercise of due diligence.

(e) Where an order of the Administrator not designated as an emergency order has been appealed and the Administrator advises the Board at any time prior to final disposition of the appeal that an emergency exists in respect of such order, the examiner or the Board shall determine from what time on the proceeding shall be governed by this section.

D. Relevant provisions of the Civil Air Regulations (14 C.F.R., 1961 ed., 1.0, *et seq.*) are:

* * * * *

§ 40.406 Take-off and landing weather minimum; IFR.

(a) Except as provided in paragraphs (c) and (d) of this section, irrespective of any clearance which may be obtained from air traffic control, no airplane shall take off or land under IFR when the ceiling or ground visibility reported by the U.S. Weather Bureau or by a source approved by the Weather Bureau

is less than the minimum approved for the airport when used as a regular airport.

(b) Except as provided in paragraphs (c) and (d) of this section, no instrument approach procedure shall be executed when the latest weather report prepared by the U.S. Weather Bureau or by a source approved by the Weather Bureau indicates the ceiling or visibility is less than the landing minimum approved for the airport when used as a regular airport.

(c) An instrument approach procedure may be executed when the weather report prepared by the U.S. Weather Bureau or by a source approved by the Weather Bureau indicates that the ceiling or visibility is less than approved minimum for landing, if the airport is served by ILS and PAR in operative condition and both are used by the pilot, and thereafter a landing may be made, if weather conditions equal to or better than the prescribed minimums are found to exist by the pilot in command upon reaching the authorized landing minimum altitude.

(d) If an instrument approach procedure is initiated when the current report prepared by the U.S. Weather Bureau or by a source approved by the Weather Bureau indicates that the prescribed ceiling and visibility minimums exist and a later weather report indicating below minimum conditions is received after the airplane (1) is on an ILS final approach and has passed the outer marker, or (2) is on a final approach using a radio range station or comparable facility and has passed the appropriate facility and has reached the authorized landing minimum altitude, or (3) is on GCA final approach and has been turned over to the final approach controller, such ILS, Range, or GCA approach may be continued and a landing may be made in the event weather conditions equal to or better than the prescribed minimums for the airport are found to exist by the

pilot in command of the flight upon reaching the authorized landing minimum altitude.

* * * * *

GENERAL FLIGHT RULES (GFR)

* * * * *

§ 60.12 Careless or reckless operation.

No person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others.

NOTE: Examples of aircraft operation which may endanger the lives or property of others are:

(a) Any person who "buzzes", dives on, or flies in close proximity to a farm, home, any structure, vehicle, vessel, or group of persons on the ground. In rural districts the flight of aircraft at low altitude often cause injury to livestock. A pilot who engages in careless or reckless flying and who does not own the aircraft which he is flying unduly endangers the aircraft, the property of another.

(b) The operation of aircraft at an insufficient altitude endangers persons or property on the surface or passengers within the aircraft. Such flight may also constitute a violation of § .60.17.

(c) Lack of vigilance by the pilot to observe and avoid other air traffic. This includes failure of the pilot to clear his position prior to starting any maneuver, either on the ground or in flight; and special flight activities which require such preoccupation by the pilot with cockpit duties as would prevent adequate vigilance outside the cockpit for the purpose of collision avoidance without compensation for such reduced degree of vigilance by the use of a competent observer in the aircraft, a chase aircraft, or other equivalent arrangements.

(d) Passing other aircraft too closely.

(e) An operation conducted above a cloud layer in accordance with VFR minimums which results in the pilot becoming involved in instrument flight, unless the pilot possesses a valid instrument rating, the aircraft is properly equipped for instrument flight, and all IFR requirements are observed.

* * * * *

§ 60.14 Right-of-way.

An aircraft which is obliged by the following rules to keep out of the way of another shall avoid passing over or under the other, or crossing ahead of it, unless passing well clear:

* * * * *

(*d*) *Overtaking.* An aircraft that is being overtaken has the right-of-way, and the overtaking aircraft, whether climbing, descending, or in horizontal flight, shall keep out of the way of the other aircraft by altering its course to the right, and no subsequent change in the relative positions of the two aircraft shall absolve the overtaking aircraft from this obligation until it is entirely past and clear;

NOTE: Passing an overtaken aircraft on the right is required because the pilot in side-by-side, dual-control aircraft is seated on the left and has a better view on that side. Further, in narrow traffic lanes, passing on the left of an overtaken aircraft would place the overtaking aircraft in the path of the oncoming traffic.

* * * * *

§ 60.15 Proximity of aircraft.

No person shall operate an aircraft in such proximity to other aircraft as to create a collision hazard. No person shall operate an aircraft in formation flight when passengers are carried for hire. No aircraft shall be operated in formation flight except by prearrangement between the pilots in command of such aircraft.

* * * * *

§ 60.18 Operation on and in the vicinity of an airport.

* * * * *

(c) Aircraft operating from an airport shall conform to the traffic patterns prescribed for that airport;

* * * * *

§ 60.21 Adherence to air traffic clearances.

When an air traffic clearance has been obtained under either VFR or IFR rules, the pilot in command of the aircraft shall not deviate from the provisions thereof unless an amended clearance is obtained. In case emergency authority is used to deviate from the provision of an air traffic clearance, the pilot in command shall notify air traffic control as soon as possible and, if necessary, obtain an amended clearance. However, nothing in this section shall prevent a pilot, operating on an IFR traffic clearance, from notifying air traffic control that he is canceling his IFR flight plan and proceeding under VFR: *Provided*, That he is operating in VFR weather conditions when he takes such action.

* * * * *

§ 60.30 Basic VFR minimum weather conditions.

Aircraft shall not be flown VFR in weather conditions below those specified herein except as provided in § 60.31. When VFR flight operations are conducted in accordance with the provisions of § 60.32 at an altitude coincident with the designated base of the continental control area, control area or transition area, the visibility and clearance-from-cloud requirements applicable to the immediately underlying airspace shall govern.

(a) *Clearance from clouds*—(1) *In controlled airspace.* Aircraft shall not be flown VFR less than 500 feet vertically under, 1,000 feet vertically over, and 2,000 feet horizontally from any cloud formation except that, in the continental control area, aircraft shall not be flown VFR less than 1,000 feet vertically and one mile horizontally from any cloud formation. Aircraft shall not be flown VFR within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE 1963